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**United States Department of Energy  
Office of Hearings and Appeals**

In the Matter of: Personnel Security Hearing	)	
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Filing Date: July 18, 2022	)	Case No.: PSH-22-0121
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Issued: October 28, 2022

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**Administrative Judge Decision**

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Noorassa A. Rahimzadeh, Administrative Judge:

This Decision concerns the eligibility of XXXXXXXXXXXX (the Individual) to hold an access authorization under the United States Department of Energy's (DOE) regulations, set forth at 10 C.F.R. Part 710, "Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material."<sup>1</sup> As discussed below, after carefully considering the record before me in light of the relevant regulations and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (June 8, 2017) (Adjudicative Guidelines), I conclude that the Individual's access authorization should be granted.

**I. Background**

A DOE Contractor employs the Individual in a position that requires her to hold an access authorization. As part of the clearance process, the Individual was required to complete a Questionnaire for National Security Positions (QNSP), which she signed and submitted on February 24, 2022. Ex. 4. In the QNSP, the Individual was asked questions about whether she had engaged in the use or purchase of any illicit or controlled substances within the past seven years. Ex. 4 at 22. The directions pertaining to these questions indicated that the "questions pertain to the illegal use of drugs or controlled substances or drug or controlled substance activity in accordance with Federal laws, even though permissible under state laws." Ex. 4 at 22. The Individual did not indicate any use or purchase of such substances in her QNSP. Ex. 4 at 22.

The Office of Personnel Management (OPM) subsequently conducted an enhanced subject interview (ESI) of the Individual on March 25, 2022. Ex. 5 at 43. During the ESI, the Individual disclosed that she had used an illicit substance within the past seven years. Ex. 5 at 44.

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<sup>1</sup> The regulations define access authorization as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). This Decision will refer to such authorization as access authorization or security clearance.

Due to unresolved security concerns, the LSO began the present administrative review proceeding by issuing a letter (Notification Letter) to the Individual in which it notified her that it possessed reliable information that created substantial doubt regarding her eligibility to hold a security clearance and that her clearance had been suspended. In a Summary of Security Concerns (SSC) attached to the letter, the LSO explained that the derogatory information raised security concerns under Guideline E (Personal Conduct) of the Adjudicative Guidelines. Ex. 1. The Notification Letter informed the Individual that she was entitled to a hearing before an Administrative Judge to resolve the substantial doubt regarding her eligibility to hold a security clearance. *See* 10 C.F.R. § 710.21.

The Individual requested a hearing, and the LSO forwarded the Individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as Administrative Judge in this matter. At the hearing I convened pursuant to 10 C.F.R. § 710.25(d), (e), and (g), the Individual testified on her own behalf and presented the testimony of one witness, her boyfriend. She also submitted two exhibits, marked as Exhibits A through B. The DOE Counsel submitted five exhibits marked as Exhibits 1 through 5 and did not present any witness testimony.

## **II. Notification Letter and Associated Concerns**

As indicated above, the Notification Letter informed the Individual that information in the possession of the DOE created substantial doubt concerning her eligibility for a security clearance. That information pertains to Guidelines E of the Adjudicative Guidelines. Ex. 1.

Under Guideline E, “[c]onduct involving questionable judgement, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information.” Adjudicative Guidelines at ¶ 15. Among those conditions set forth in the Adjudicative Guidelines that could raise a disqualifying security concern is a “[r]efusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.” Adjudicative Guidelines at ¶ 15(b). Regarding the Guideline E allegations, the LSO alleged that in the February 2022 QNSP, the Individual stated that she had not used any illicit substances, but it was revealed during the March 2022 ESI that she had ingested marijuana in July 2021 and that she had been less than forthcoming about this incident because she was embarrassed by the event. Ex. 1 at 1. The LSO further alleged that although the Individual had stated in her QNSP that she had not purchased any illicit substances in the past seven years, she stated during the ESI that she had purchased “a ten pack of edible marijuana products in July 2021[,]” and that she had failed to disclose this on her QNSP due to feelings of embarrassment. Ex. 1 at 1.

## **III. Regulatory Standards**

A DOE administrative review proceeding under Part 710 requires me, as the Administrative Judge, to issue a decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). The regulatory

standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting or restoring access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. *Id.* § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

#### **IV. Findings of Fact and Hearing Testimony**

In the February 2022 QNSP, the Individual was asked whether she had used any controlled or illicit substances within the past seven years. Ex. 4 at 22. She marked “[n]o” in response to the question. Ex. 4 at 22. The Individual also marked “[n]o” in response to the question asking whether she had been “involved in the illegal purchase...of any drug or controlled substance[,]” pursuant to Federal laws. Ex. 4 at 22.

As previously stated, the Individual underwent an ESI conducted by an OPM investigator. Ex. 5. When asked about whether she had used illicit substances within the past seven years, the Individual indicated that while on vacation with her boyfriend in July 2021, she visited a marijuana dispensary without her boyfriend and purchased a 10-pack of ingestible “gummies” containing tetrahydrocannabinol (THC). Ex. 5 at 44. The Individual told the investigator that she “wanted to try [the gummies] since they were legal in [the state she was visiting] and [she] did not think it was wrong.” Ex. 5 at 44. The Individual consumed two of the gummies and discarded the rest. Ex. 5 at 44. The investigator ascertained that the Individual had not informed anyone of this incident, as she was embarrassed, and further, she had no intention of consuming any such substances in the future because she did not like the sensation it gave her. Ex. 5 at 44.

The Individual’s boyfriend was interviewed by an OPM investigator on March 30, 2022. Ex. 5 at 54-55. During that interview, the Individual’s boyfriend was asked by the OPM investigator whether the Individual had used any illicit substances in the past seven years. Ex. 5 at 55. The Individual’s boyfriend told the investigator that while they were on vacation in June or July 2021, the Individual had purchased “edibles with THC from some store.” Ex. 5 at 55. After consuming one of the edibles, the Individual discarded the substance, as she did not enjoy the way the substance made her feel. Ex. 5 at 55. The Individual’s boyfriend also told the OPM investigator that the Individual “does not usually do drugs” and that she has not used any illicit substances since this incident. Ex. 5 at 55.

At the hearing, the Individual’s boyfriend, who was with the Individual on her July 2021 vacation and currently holds a DOE security clearance, testified that the individual made him aware of the

LSO's concerns. Tr. at 12-14. Specifically, he was made aware that she indicated that she had not consumed any illicit substances on her QNSP, and later admitted that she had. Tr. at 14. The Individual's boyfriend testified that he had discussed the matter of substance use with the Individual while en route to their vacation destination, and he stated that he "want[ed] no part of it" but understood that the Individual was an adult who could "make her own decisions if she wanted to do it." Tr. at 14-15. He testified that the Individual wanted to consume marijuana, as she had never had that experience, and proceeded to purchase edibles at a dispensary. Tr. at 15-16. He stated that she consumed one edible outside of his presence and discarded the rest. Tr. at 15-16. The Individual's boyfriend testified that the Individual told him that "she did not like[]" the experience and expressed some regrets. Tr. at 16. He has never seen her or known her to consume any illicit substances before or since the alleged incident. Tr. at 16-17. The Individual's boyfriend also indicated that she stated her intention to never use such substances again. Tr. at 17.

Regarding the omission on the QNSP, the Individual's boyfriend discussed the matter with the Individual and concluded that the Individual forgot to state her use because she had only used marijuana on one occasion. Tr. at 18-21. He indicated that the Individual "[did not] really think about it" but disclosed it to the OPM investigator upon remembering the incident during the ESI. Tr. at 18, 20. During his testimony, he stated that the Individual "did not...intentionally" omit this information from her QNSP. Tr. at 21. He testified that he feels the Individual "has honesty, integrity[,] and is trustworthy, and that she has never been anything less than honest or trustworthy in the time he has known her."<sup>2</sup> Tr. at 21. Further, when asked by DOE Counsel when the Individual has given him cause to "doubt [the Individual's] reliability or trustworthiness[.]" he indicated that she has not. Tr. at 21. He also confirmed in his testimony that no one else knew of the Individual's marijuana use, but also confirmed his belief that the incident is not "something that she would actively try to hide[.]" Tr. at 22. During his testimony, the Individual's boyfriend also confirmed that he was not aware that the Individual had already disclosed her illicit drug use prior to his interview with the OPM investigator, but that they had discussed their respective interviews after the interviews were conducted. Tr. at 23-24.

In her testimony, the Individual confirmed that she had celebrated a milestone birthday around the time of her July 2021 vacation,<sup>3</sup> and she stated to her boyfriend her desire to try marijuana while on vacation. Tr. at 27. Her boyfriend "had objections and...wanted no part of it." Tr. at 27. After they arrived at the destination, she went to a dispensary and purchased a pack of marijuana edibles and proceeded to consume two of them. Tr. at 27. At that time, she began "experiencing anxiety, unsettledness." Tr. at 28. She disposed of the remaining edibles. Tr. at 28. In her testimony, she denied having ever used any illicit substances prior to or since the incident and stated her intention to never use such substances again. Tr. at 28. She also confirmed that no one outside of her boyfriend has any knowledge of the incident, and stated that "[it is] just not something that [she is] going to parade around" but that she would disclose it to someone she "trusted." Tr. at 29.

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<sup>2</sup> The Individual also submitted two letters from character witnesses. Both letters described the Individual's penchant for hard work. Exs. A and B. One letter indicated that the Individual is "trustworthy, hardworking, and believes in the mission she is supporting." Ex. B. Another character letter indicated the Individual performed her duties "while maintaining a strong sense of credibility, trustworthiness, and integrity." Ex. A.

<sup>3</sup> The Individual testified that her employer at the time did not have any restrictions on marijuana use. Tr. at 28.

The Individual testified that she did read the QNSP carefully, as she took the matter seriously. Tr. at 29-30. She also stated that, among other reasons, she failed to indicate on her QNSP that she had consumed any illicit substances because she “[had not] experimented and [had not] done anything.” Tr. at 39. Accordingly, she stated, she “instinctively...was like, ‘[o]h, no, definitely not.’” Tr. at 30. Further, she stated that she had consumed the marijuana in a state where it was legal to do so,<sup>4</sup> but that she now understands that marijuana is illegal under federal law, and this difference was explained to her by the OPM investigator. Tr. at 30, 38. She also testified that the OPM investigator asked her why she did not disclose the incident to other people, and she stated that she was embarrassed by the incident. Tr. at 32. The Individual stated that, accordingly, she feels that the embarrassment causes her not to think about the incident. Tr. at 38-39. However, she indicated that as she “was correcting the data instead of having an omission[,]” she “[was not] trying to deceive this investigation.” Tr. at 32-33. She said that because the omission was not deliberate, she did not omit the incident from the QNSP because of any embarrassment. Tr. 37-38. However, she wanted “make sure that all [her] bases were covered and that incident was reported.” Tr. at 30.

In recounting how the ESI proceeded, she testified that the OPM investigator was going through each QNSP question with her during the interview, and when they reached the question specific to illicit substances, she immediately informed the investigator of the incident. Tr. at 33, 41. When asked how she remembered this information in that moment, she indicated that it was the “face-to-face” contact with the investigator that prompted her to remember the incident. Tr. at 42. The OPM investigator also made mention of “federally illegal drugs[]” when he asked her about any drug use, at which point it “clicked” that marijuana is not legal under federal law.<sup>5</sup> Tr. at 44. The Individual testified that she wanted to make sure the DOE had the information once she remembered the incident. Tr. at 42. Through questioning conducted by DOE Counsel, the Individual confirmed her understanding that her boyfriend, who knew about the incident, would likely be interviewed by investigators and would likely provide investigators with honest answers regarding the incident. Tr. at 34-35. She stated that “[she] did not deliberately try to conceal any information.” Tr. at 36. The Individual also testified that “although [she is] not proud of the situation,” she believes that this is not the sort of information that could be used to blackmail her, as the drug use is not so grave an incident. Tr. at 29, 40. Further, the Individual confirmed that she understands her ongoing duty to report any matter that may raise a concern under the Adjudicative Guidelines. Tr. at 43.

## V. Analysis

As noted, Guideline E concerns “[c]onduct involving questionable judgement, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an

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<sup>4</sup> The Individual clarified in her testimony that her failure to disclose the incident could also be contributed to the fact that the consumption “[did not] feel illegal[]” because it was legal in the state in which she consumed it. Tr. at 31. She also testified that she does not believe that she discussed her misunderstanding of the fact that marijuana was illegal under federal law with the OPM investigator. Tr. at 32-33.

<sup>5</sup> The Individual testified that she did not make this connection when she completed her QNSP. Tr. at 45.

individual's reliability, trustworthiness, and ability to protect classified or sensitive information.” Adjudicative Guidelines at ¶ 15. Conditions that could mitigate Guideline E concerns include:

- a) The individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- b) The refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- c) The offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- d) The individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- e) The individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- f) The information was unsubstantiated or from a source of questionable reliability; and
- g) Association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations

Adjudicative Guidelines at ¶ 17(a)-(g).

The Individual asserted in her closing statement that she had mitigated the stated concerns pursuant to the mitigating factor at ¶ 17(a). I agree. There is no doubt that the Individual was required to list her use of edibles containing THC on the QNSP. However, I find the Individual's testimony credible on her explanation for the listing omission and the subsequent disclosure. As the Individual testified, the purchase and consumption of the substance at issue here were legal in the state she was visiting, leading her to erroneously believe that this act was not illegal. Further, the negative feelings she testified she associated with the incident -- and the fact that her lifestyle before and after the incident excluded such use -- resulted in her failing to remember the act. She credibly testified that once she was in a “face-to-face” conversation with the OPM investigator and he directly asked the question of past drug use to her, she remembered the noted incident and immediately disclosed the matter to him.

I also find that the Individual's disclosure of the incident to the OPM investigator was prompt and in good faith. The Individual testified that during her interview with the OPM investigator, who

specifically asked her about any illicit substance use within the past seven years, she voluntarily disclosed the information without first being confronted with any facts. Notably, the OPM report is also bereft of any indication that the Individual was first confronted with the incident before admitting that it happened. Five days after the Individual's interview with the OPM investigator, the Individual's boyfriend, who was privy to the particulars of the incident, was interviewed by an OPM investigator and disclosed the same incident. The Individual's boyfriend, who was honest with the OPM investigator, provided no indication in his testimony that he had discussed the incident with the Individual prior to either his or her interview and revealed to her that he intended to disclose the matter to investigator. Importantly, the Individual's statements at the hearing were corroborated by her boyfriend's testimony. The evidence before me indicates that the Individual disclosed the facts of the incident as soon as she remembered and made the disclosure prior to being confronted with the facts. Accordingly, I find that she has mitigated the stated concerns pursuant to the mitigating factor at ¶ 17(a).

## **VI. Conclusion**

For the reasons set forth above, I conclude that the LSO properly invoked Guideline E of the Adjudicative Guidelines. After considering all the evidence, both favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I find that the Individual has brought forth sufficient evidence to resolve the security concerns set forth in the SSC. Accordingly, the Individual has demonstrated that granting her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Therefore, I find that the Individual's access authorization should be granted. This Decision may be appealed in accordance with the procedures set forth at 10 C.F.R. § 710.28.

Noorassa A. Rahimzadeh  
Administrative Judge  
Office of Hearings and Appeals